

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

14265 *Lupton*  
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FILE: B-198134

DATE: JUL 11 1980

MATTER OF: Military Disbursing Office Liability for  
Recurring Payments After Death or Incapacity  
of Recipient

**DIGEST:**

Treasury Department regulations  
31 CFR Part 210 governing recurring  
payments made through the electronic funds  
transfer program directly to recipients'  
bank accounts, generally limits liability  
of financial organization to Government  
for payments by disbursing officer after  
entitlement ceases because of death or  
incapacity of recipient to amount of  
payments within 45 days after death or  
incapacity. Government and Disbursing  
officer are adequately protected inasmuch  
as agency can recover remainder of erroneous  
payments from person who withdrew funds  
from the account. Where recovery is  
unsuccessful, disbursing officer can seek  
relief of liability from this Office under  
31 U.S.C. § 82a-2.

The Principal Deputy Assistant Secretary of Defense (Comptroller) has requested a decision concerning [disbursing officer's liability] under 31 U.S.C. § 82b for checks indorsed for a deceased payee under Treasury Department regulations, "Federal Recurring Payments Through Financial Organizations by Means Other than by Check," 31 CFR Part 210. Disbursing officers are liable for the full amount of improper payments made under the recurring payments system. However, this Office may grant relief if we find that the officers were not personally negligent and could not, with reasonable diligence, have determined that the payments were improper, and the department has diligently pursued collection action.

The problem may be illustrated with a hypothetical example. A retired member of the military service is receiving retirement pay in the form of monthly checks. He wants his monthly retirement pay deposited directly into a joint checking account that he maintains with

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his wife. Hence he completes a Standard Authorization Form, has the bank execute its part of the form, and forwards it to the Finance Center. Under this authorization, his future monthly retirement pay is deposited directly into his joint account. He subsequently dies, terminating his entitlement to pay, but the bank and the Finance Center are not notified of the death. Consequently his regular monthly pay continues to be deposited in the joint account although such payments are now improper. The wife continues to expend the funds in the account for two years until the Finance Center learns of the member's death and terminates the payments.

The bank's liability for such payments is limited by the provisions of 31 C.F.R. § 210.9, which reads as follows:

"(a) When, because of the death or legal incapacity of a recipient or the death of a beneficiary, one or more credit payments should have been returned to the Government, a financial organization shall be accountable to the Government for the total amount of any such credit payments: Provided, however, That if:

"(1) Such amount, or any part thereof is not available in the recipient's account; and

"(2) The financial organization did not have, at the time of the deposit and withdrawal, knowledge of the recipient's death or legal incapacity, or the beneficiary's death, and

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"(3) The financial organization has made every practicable administrative effort to recover the amount which is not available in the recipient's account;

"the financial organization shall be accountable only for:

"(i) The amount available in the recipient's account and the amount recovered by it, plus

"(ii) The amount not recovered by it, or an amount equal to the credit payments received by it within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary, whichever is the lesser amount.

"(b) A financial organization shall be deemed to have knowledge of the death or legal incapacity of a recipient or the death of a beneficiary when such information is brought to the attention of an individual in the financial organization who handles credit payments, or when such information would have been brought to such individual's attention if the financial organization had exercised due diligence. The financial organization will be considered to have exercised due diligence only if it maintains procedures for immediately communicating such information to the appropriate individuals, and complies with such procedures."

Generally, under this regulation (leaving aside amounts which it recovers or which remain in the account,) the bank will be liable for any payments received within 45 days after the event terminating the payee's entitlement (or the balance due to the Government, whichever is less) where

the bank had no knowledge of the event and has followed appropriate procedures in handling the matter. (The bank may be liable for the full amount if it has not satisfied the loss with funds available in the recipient's account and, failing that, has not made "every practicable administrative effort" to recover the improper payments.)

The Department of Treasury has agreed, in effect, by contract, that a participating financial organization will be liable for recurring payments made after the death or legal incapacity of a recipient only under the conditions cited above. 31 U.S.C. § 210.7(a). It is doubtful that these organizations would elect to participate in the fund transfer program, inasmuch as participation is voluntary, without at least some limitation on their liability.

The limitation of the financial organizations' liability does not affect the liability of a disbursing officer for the entire amount of the improper payment. The limitation means that the agency may seek recovery from the financial organization only for the portion of the amount improperly paid for which it is liable under the provisions of the above-quoted regulation. The remainder of the amount improperly paid must be recovered from whomever ultimately received the improper payment, by withdrawing funds from the account after improper payments were made. If the financial organization cannot recover the full amount and the agency has exhausted collection procedures and has been unable to eliminate the deficiency, the disbursing officer may be relieved of liability for the deficiency pursuant to 31 U.S.C. § 82a-2. The disbursing officer must show, and this Office must agree, that the improper payments were not the result of bad faith or lack of due care on his part (and a diligent effort must have been made by the agency to recoup the erroneous payments). Specifically, the disbursing officer would have to show, in the case of payments after

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a retired member's death, that he did not know and in the exercise of reasonable care could not have known that the member was dead. Upon such showings, this Office may grant relief. See for example our report: New Methods Needed for Checking Payments Made By Computers, FGMSD 76-82, November 7, 1977.

In sum, the Treasury regulations are a reasonable exercise of discretion. Although they limit the financial organization's liability, they do not limit the Government's ability to collect from whomever ultimately received the improper payments. Moreover, the regulations do not affect the disbursing officer's liability or his right to relief.

MILTON GOLDBERGER

For the

Comptroller General  
of the United States